

FINAL

**SAFETY AND HEALTH CODES BOARD
MINUTES
MONDAY, DECEMBER 2, 2002**

The Safety and Health Codes Board (“Board”) met on Monday, December 2, 2002 in Courtroom B of the State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia. The meeting was called to order at 10:00 a.m. by Chairman Linwood Saunders.

BOARD MEMBERS PRESENT: Mr. Linwood Saunders
Mr. Bobby J. Sasser
Mr. Chuck Stiff
Mr. Franklin Owens
Ms. Anna Jolly
Mr. Brian F. Melchor
Mr. Louis Cernak
Dr. Khizar Wasti
Mr. Richard Schneider
Mr. James J. Golden

BOARD MEMBERS ABSENT: Mr. Roger L. Burkhart
Ms. Juanita L. Garcia
Mr. Alvin E. Keels, Sr.
Mr. Rod Parker

STAFF PRESENT: Mr. C. Ray Davenport, Commissioner
Mr. Adam Ebbin, Chief Deputy Commissioner
Mr. Glenn Cox, Director of VOSH Programs
Mr. Clarence H. “Butch” Wheeling
Mr. Jay Withrow, Director, Legal Support
Mr. John Crisanti, Manager, Planning and Evaluation
Mr. Fred Barton, Director, Boiler Safety Compliance
Ms. Bonnie R. Hopkins, Regulatory Coordinator
Ms. Regina Cobb, Agency Management Analyst Sr.

OTHERS PRESENT: Mr. Cotton Sizemore, Virginia State Building Inspectors
Ms. Beverly Crandell, Federal OSHA, Region III
Mr. Steve Vermillion, AGC
Ms. Peggy Spafford, Dominion
Ms. Tammy Burnette, Dominion
Mr. Walter Wise, Iron Workers International

ORDERING OF AGENDA

As the first order of business, Mr. Saunders opened the floor accepting the agenda for the meeting. The agenda was accepted as submitted.

APPROVAL OF MINUTES

A motion was made and seconded to accept the minutes of April 11, 2002 and September 24, 2002 as submitted. The motion carried by voice vote.

STAFF COMMENTS

Mr. John Crisanti announced the reappointment by the Executive of three (3) Board members: Mr. Roger L. Burkhart, employer representative of the Boiler and Pressure Vessel Industry; Mr. Linwood Saunders, labor representative in the manufacturing industry; and Mr. Brian Melchor, labor representative in the construction industry.

He also introduced a new member: Louis J. Cernak, Jr., who is a labor representative of the Boiler and Pressure Vessel Industry. Mr. Crisanti informed the Board of three individuals who were appointed to the Board but unable to attend the meeting: Mr. Rod Parker, representative for agricultural employers; Ms. Juanita Garcia, representing agricultural employees; and Mr. Alvin E. Keel, representing an insurance company.

Mr. Crisanti also informed the Board that as a result of budgetary constraints, the Board packages will be available on the Department's website, www.doli.state.va.us. He gave Board members the option of continuing to have the packages mailed or receiving them electronically. He also informed the Board that the Department would no longer use a court reporter to transcribe the meetings of the Board.

Finally, Mr. Crisanti spoke briefly about the election of Board officers. He informed the Board members that traditionally the chairmanship alternated between labor and management representatives. Chairman Saunders commented that the Board would stay in the traditional alternating cycle for chairmanship.

PUBLIC COMMENT

Chairman Saunders opened the floor to comment from the public.

Mr. Walter Wise, representing the Iron Workers International, addressed the issue of the Proposed Safety Standard for Fall Protection in Steel Erection. He expressed his concern that Virginia did not adopt verbatim federal OSHA's Fall Protection in Steel Erection standard. He said a lot of work was done to develop the federal rule and much testimony was presented in support of the federal rule. He also said that the iron workers still have problems regarding Virginia's proposed 10 foot rule for protection, as opposed to the federal 15 foot rule.

Mr. Wise asked that the Board continue the regulatory process to get as much feedback as possible. He was pleased that the Board agreed that specific rulemaking was needed rather

than continuing to enforce administrative policy. Mr. Wise stated that the state and his organization are both committed to the safety of workers and better training.

No other individuals came forward to address the Board.

ELECTION OF OFFICERS

Mr. Saunders opened the floor to nominations for officers from the Board. Mr. Sasser was nominated for Chairman by Mr. Lou Cernak and Mr. Frank Owens seconded the motion. Mr. Sasser was elected Chairman by voice vote. Then Mr. Richard Schneider was nominated by Mr. Saunders to be Vice Chairman. Mr. Owens seconded the motion. Mr. Schneider was elected Vice Chairman by voice vote. Mr. Sasser said he would appoint a Secretary at a later time.

OLD BUSINESS

16 VAC 25-20-20 et seq., Final Proposed Amendments to Public Participation Guidelines

Mrs. Bonnie Hopkins, Agency Regulatory Coordinator, updated the Board on the Public Participation Guidelines (PPGs). She said the final amendments will remove repealed or redundant language in the regulation and they also will provide for notification to the public of regulatory action and the receipt of comments by electronic means.

She informed the Board that the next step in the amendment process is the publication of the final amendments to the regulation. No changes were made in the amended text of the regulation since the proposed action was published on August 26, 2002.

Ms. Hopkins further stated that following approval of these amendments by the Board, the package will be filed with the Department of Planning and Budget for review by the Planning and Budget staff, the Secretary of Commerce and Trade office, and the Governor's office.

On behalf of the Department, Ms. Hopkins asked for the Board's approval of the final amendments for 16 VAC 25-10-10 *et seq.*, Public Participation Guidelines. Chairman Sasser asked for a motion from the Board to approve the request made by Ms. Hopkins. Mr. Schneider made the motion to approve the Department's request and Mr. Stiff seconded the motion. The motion carried by voice vote.

16 VAC 25-145 (1926.760 (a), (b) and (c)), Safety Standards for Fall Protection in Steel Erection, Construction Industry; Proposed Regulation

On behalf of the VOSH Program, Mr. Glenn Cox, Director of VOSH Programs, requested the Board to consider the provided draft for adoption as "proposed" standards of the Board and to continue the regulatory adoption process. Mr. Cox explained that at its October 18, 2001 meeting, the Board adopted federal OSHA's revised Safety Standards for Steel Erection as §§1926.750 through 1926.761, except §1926.760 (a), (b) and (c), and amended §1926.500, covering Fall Protection.

He further explained that the intent of the rulemaking is to establish in regulation the current VOSH administrative policy whereby VOSH regulations, §§1926.28(a) and 1926.105(a),

are used to require steel erection employers to provide protection for steel erection workers from falls at or above 10 feet. An exception to the use of §1926.28(a) in steel erection would be for employees working as “connectors.” Virginia prohibits the use of a control decking zone.

Chairman Sasser asked for a motion from the Board to approve Mr. Cox’s recommendation. Mr. Schneider made the motion to adopt the Department’s recommendation and Mr. Stiff seconded the motion. The motion carried by voice vote.

16 VAC 25-50, Amendments to the Boiler and Pressure Vessel Rules and Regulations; Final Rule

On behalf of the Boiler Safety Compliance Program, Mr. Fred Barton, Chief Boiler Inspector, requested the Board to consider the suggested amendments to the Boiler and Pressure Vessel Rules and Regulations for adoption as a final regulation of the Board. He added that these regulations presented were revisions of the amendments previously reviewed and adopted as “proposed” regulations by the Board at its April 11, 2002 meeting.

Two sections were changed in this proposed final regulation to add a reference to Part CG (General) of ASME CSD-1, Controls and Safety Devices for Automatically Fired Boilers. These revisions reflect a comment received from a board member, Roger Burkhart, regarding the proposed amendments.

Chairman Sasser asked for a motion from the Board to approve Mr. Barton’s request to consider the suggested amendments as final regulations of the Board. Ms. Anna Jolly made the motion to adopt the Department’s recommendation, and Mr. Schneider seconded the motion. The motion carried by voice vote.

NEW BUSINESS

16 VAC 25-85-1904.10, Occupational Injury and Illness Recording and Reporting Requirements, §1904.10; Revised Final Rule

Dr. Butch Wheeling, Director of Occupational Health Compliance, requested the Safety and Health Codes Board to consider for adoption federal OSHA’s revised final rule on the Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR §1904.10(a) and (b)(1) through (7), with an effective date of March 1, 2003. The final rule revised the criteria for recording hearing loss cases that have resulted in more than a 10db loss (or shift) above a total 25 dB loss of hearing above audiometric zero. OSHA added a regulatory note to 29 CFR 1904.10(b)(7) explaining that it is delaying the applicability of 29 CFR §1904.10(b)(7) until further notice while OSHA reconsiders the hearing loss column of the OSHA 300 Log.

Dr. Wheeling mentioned that on October 18, 2001, the Board adopted the revised final rule for the Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR §§1904.0 through 1904.46, with an effective date of January 1, 2002 for §§1904.0 through 1904.4, 1904.11, and 1904.13 through 1904.46. Sections 1904.10 and 1904.12 have an effective date of January 1, 2003. Dr. Wheeling then clarified how “baseline” was defined and how the 10 dB shift would be measured.

Chairman Sasser asked for a motion from the Board to adopt the revised final rule. Mr. Chuck Stiff made the motion and Mr. Brian Melchor seconded the motion. The motion carried by voice vote.

16 VAC 25-175-1926.200 through 1926.203, Safety Standards for Signs, Signals, and Barricades, Subpart G, §§1926.200 through 1926.203

On behalf of the VOSH Program, Mr. Cox requested the Board to consider for adoption federal OSHA's final rule for Signs, Signals, and Barricades, 29 CFR §§1926.200 through 1926.203, with an effective date of March 1, 2003. Since this regulation was without controversy, Mr. Cox listed the requirements of the revised standards as follows:

1) retro-reflective and illuminated devices at intermediate and long-term stationary temporary traffic control zones; 2) warning devices for mobile operations at speeds above 20 mph; 3) advance warning signs for certain closed paved shoulders; 4) a transition area containing a merging taper when one lane is closed on a multi-lane road; 5) temporary traffic control devices with traffic barriers that are immediately adjacent to an open lane; and 6) temporary traffic barriers separating opposing traffic on a two-way roadway.

Mr. Cox explained that prior to promulgating this final rule, federal OSHA required employers to comply with the 1971 Manual on Uniform Traffic Control Devices (MUTCD). A U. S. Department of Transportation rule, however, requires that such traffic control signs or devices conform to a more recent version of the MUTCD-- Revision 3 or Part VI of the Millennium Edition, which is the national benchmark for all roads. Through this final rule, federal OSHA requires traffic control signs, signals, barricades or devices to conform to Revision 3 or the Millennium Edition of the MUTCD as the OSHA standard for the construction industry.

Chairman Sasser asked for a motion from the Board to adopt the revised final rule. Mr. Saunders made the motion and Ms. Jolly seconded the motion, which carried by acclamation.

16 VAC 25-90-1910.33 through 16VAC 25-90-1910.39, Exit Routes, Emergency Action Plans, and Fire Prevention Plans

Mr. Cox, presenting again, requested, on behalf of the VOSH Program, that the Board consider for adoption federal OSHA's final rule for Exit Routes, Emergency Action Plans and Fire Prevention Plans, 29 CFR §§1910.33 through 1910.39, with an effective date of March 1, 2003.

Mr. Cox explained that this revision reorganizes the text, removes inconsistencies among sections and eliminates duplicative requirements. A table of contents was added to make the standards easier to use. Additionally, this revision changes the name of Subpart E from "Means of Egress" to "Exit Routes, Emergency Action Plans and Fire Prevention Plans. The most important change is that compliance by an employer with National Fire Protection Association, NFPA 101-2000, the Life Safety Code, will be deemed to be compliance with the corresponding requirements of the revised standard.

Chairman Sasser asked for a motion from the Board to adopt the revised final rule. Mr.

Frank Owens made the motion and Mr. Stiff seconded the motion, which carried by voice vote.

16 VAC25-100-1915, Occupational Safety and Health Standards for Shipyard Employment; Technical Amendments

Mr. John Crisanti requested, on behalf of the VOSH Program, that the Board consider for adoption federal OSHA's technical amendments to the final rule for the Occupational Safety and Health Standards for Shipyard Employment, 29 CFR Part 1915, with an effective date of March 1, 2003. Mr. Crisanti explained that the standard was amended because it contained a number of minor typographical, grammatical and other errors, which OSHA has corrected.

Chairman Sasser asked for a motion from the Board to adopt the technical amendments. Ms. Jolly made the motion and Messrs. Schneider and Melchor seconded the motion, which carried by voice vote.

16 VAC 25-60-190, 290 and 320, Administrative Regulation for the Virginia Occupational Safety and Health Program

Mr. Crisanti, presenting again, requested, on behalf of the VOSH Program, that the Board consider for adoption amendments to the Administrative Regulation for the Virginia Occupational Safety and Health Program, with an effective date of March 1, 2003. He informed the Board that the amendments will replace outdated references to the Title 9 Administrative Process Act with the current references.

Chairman Sasser asked for a motion from the Board to adopt the technical amendments. Mr. Owens made the motion and Mr. Stiff seconded the motion, which carried by voice vote.

Request to Initiate Notice of Intended Regulatory Action (NOIRA) to Amend General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, §1926.950(c)(1)(i)

Mr. Jay Withrow, Director of Legal Support, requested on behalf of the VOSH Program, that the Board authorize the Department to initiate the regulatory process to amend §1926.950(c)(1)(i) to make it identical to its General Industry Standard counterpart, §1910.269(l)(2)(i), by filing a Notice of Intended Regulatory Action (NOIRA), pursuant to Virginia Code §2.2-4007. This action will result in a regulation that is unique for Virginia's Occupational Safety and Health Program for the Construction Industry.

Next, Mr. Withrow explained that the purpose of this action is to provide equivalent protection for construction industry employees that their general industry counterparts have. He compared §1910.269(l)(2)(i) of the General industry with § 1926.950(c)(1)(i) of the construction industry. He stated that the standards are essentially identical except for qualifying language in §1910.269(l)(2)(i), which specifies that the wearing of protective gloves and sleeves only qualifies as insulation for the live electrical part upon which the employee is working.

Mr. Withrow noted that the effect of this language is that all other live or "hot" electrical parts and power lines in the work area would have to be insulated so an employee could not accidentally contact an energized part or power line with some other uninsulated part of his body, or other conductive object(s). The similar, but less stringent language of

§1926.269(c)(1)(i), specifies that the wearing of protective gloves and sleeves will qualify as insulation for any live electrical part in the area where the employee is working. The effect of this language is that the employee can be exposed to many uninsulated live electrical parts in his work area, but only actually be protected from touching them with his hands and arms through the use of gloves with sleeves.

Mr. Withrow explained that the need for this request to initiate rulemaking was made evident to the Department during the investigation of a fatal accident in the Commonwealth. A construction electrical transmission employee, who was wearing properly rated insulating gloves and sleeves, was electrocuted when he apparently touched an uninsulated power line with his neck/shoulder. The victim was not protected, however, from accidental contact with other live electrical parts in the immediate work area.

Chairman Sasser asked for a motion from the Board to direct the Department to initiate a NOIRA to amend §1926.269(c)(1)(i) to make it identical to §1910.269(1)(2)(i). Mr. Melchor made the motion and Mr. Saunders seconded the motion, which carried by voice vote.

ITEMS OF INTEREST FROM DOLI

Commissioner Ray Davenport welcomed new and returning Board members. He briefly detailed the budgetary changes which have affected the Department. He said that during the last budget reduction, the Department received a budget reduction in fiscal year 2003 of 9.5 % (general funds) and 15% (non-general funds). In state fiscal year 2004, the Department received a budget reduction of 12.1% (general funds) and 15% (non-general funds). He noted that these reductions were in addition to 7% and 8 % budget reductions implemented last spring which resulted in a reduction of 13 positions and 7 layoffs. Commissioner Davenport said budget reductions exceeded 15% at the Department and he noted that VOSH was not exempt. He continued by stated that there were about 5 different budget plans. He stated that the VOSH Program was dangerously on the borderline of the Department's compliance staff benchmark minimum requirement.

Commissioner Davenport stated that, as a state plan state, VOSH gets matching funds from federal OSHA annually. He added that last year, VOSH was required to return \$550,000 of grant funds because matching state funds were not available. He stated that VOSH operates under a performance grant from OSHA with specific goals and objectives to be accomplished otherwise federal funding must be returned federal OSHA. He advised the Board that the Department is under severe fiscal constraints and is awaiting December 20, 2002 when Governor Warner will present revised revenue estimates and his amendments to the 2002-04 budget before a joint meeting of the General Assembly.

Commissioner Davenport also briefly discussed the issue of VOSH inspector benchmark positions noting that if the Department does not keep the mandated minimum number of benchmark positions filled, federal OSHA has the option to place the Commonwealth in violation of its state plan agreement, revoke the plan and reinstitute direct federal enforcement.

Commissioner Davenport said that Voluntary Compliance and Consultation were affected, too.

ITEMS OF INTEREST FROM THE BOARD

There were no items of interest reported by the Board.

There being no further business to come before the Board, the meeting adjourned at 11:45 a.m.

Bobby J. Sasser, Chairman